

83-82-I

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July 19, 1983

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Mr. Barry Bush, Chief
Fire Service Training
Fire Standards and Training Commission
18 Low Avenue
Concord, New Hampshire 03301

Dear Mr. Bush:

In your memorandum of June 23, 1983, you requested an opinion as to whether a permanent full-time firefighter employed by a municipality as of July 1, 1981, who was otherwise exempted from meeting the minimum fire personnel standards adopted by the Fire Standards and Training Commission must meet those standards before he may transfer to a private contractor providing fire protection services to a municipality. Your question specifically concerned the interpretation of the term "another agency" as used in the session law exempting full-time firefighters from the minimum training standards.

It is our opinion that a permanent full-time firefighter employed by a municipality as of July 1, 1983 who is otherwise eligible for service as a firefighter may transfer to a private contractor without independently having to satisfy the minimum training requirements. It should first be noted that the threshold question of whether a full-time career firefighter employed by a private contractor providing fire protection services to a municipality must meet the standards of the Commission was answered in the affirmative by our letter to you dated January 10, 1983. That opinion also noted that firefighters employed by private contractors that provide in-plant or on-site protection to a specific industry do not have to meet the Commission's standards.



When the Fire Standards and Training Commission as it presently exists was established by the legislature in Laws of 1981, Chapter 528, the following section was included:

"528:3 Permanent Full-Time Fire Fighters Currently Employed. Permanent full-time fire fighters employed as of the effective date of this act shall not be required to complete any program of fire training required under RSA 154-C:5, I as a condition of tenure or continued employment; neither shall the failure of any such fire fighter to fulfill such requirements render him ineligible for any promotional examination for which he is otherwise eligible or prevent him from transferring employment as a fire fighter to another agency within the state."

Under the terms of this provision, any permanent full-time fire fighter employed as of July 1, 1981 may transfer "to another agency within the state" without having completed a required program of fire training. The issue raised by your question is whether a private contractor is "another agency" within the meaning of this section.

The overall purpose of Laws of 1981, Ch. 528 is to establish "fire service training programs to insure that fire fighters meet minimum standards established by the commission." See RSA 154-C:1. Section 3 of Chapter 528 was intended as a grandfather clause to ensure that existing full-time firefighters would not subsequently lose their employment as a result of newly adopted training requirements of the Commission. Each firefighter employed as of July 1, 1981 is assured that he or she will not have to undergo newly adopted training requirements to be eligible for continued employment. We view the language "another agency within the state" to mean another firefighting agency in New Hampshire, either operated directly by a municipality or under contract with it, assuming of course that the contracting private agency is otherwise certified to perform such services.

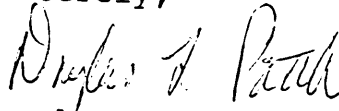
Since the focus of the chapter is on the minimum training requirements for individual firefighters, it would make no sense to require a firefighter who was employed full-time for a municipality as of July 1, 1981, to meet the minimum training requirements established by the Commission merely because his employer is a private contractor instead of a municipal department, while exempting another firefighter with similar training and experience from these training requirements because

he works for a department of a municipality instead of a company hired by a municipality. The purpose of the statute, insuring that individual firefighters meet minimum training standards, is wholly unrelated to the issue of who the employer is.

We therefore interpret Laws of 1981, 528:3 to allow a full-time firefighter employed as of July 1, 1981 to transfer to a private contractor providing fire services to a municipality without having to fulfill the minimum training requirements.

I trust this has been responsive to your question. Please let me know if you have any further questions.

Sincerely,



Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

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